

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

5:12-CV-0117 (LEK/ATB)

KENNETH J. HOWARD,

Defendant.

DECISION and ORDER

I. INTRODUCTION

On January 21, 2012, Plaintiff commenced this action alleging that Kenneth J. Howard (“Defendant”) defaulted on a promissory note. Dkt. No. 1 (“Complaint”). Now before the Court is Plaintiff’s Third Motion for default judgment brought pursuant to Federal Rule of Civil Procedure 55(b)(2). Dkt. No. 10 (“Motion”).

II. BACKGROUND

Defendant is a resident of Syracuse, New York. Compl. ¶ 2. The Complaint alleges that Defendant executed a promissory note to secure loans from the U.S. Department of Education, and that he has failed to repay the loans in full. See generally id. Defendant did not file a responsive pleading, and on April 26, 2012, the Clerk filed an Entry of default against Defendant at Plaintiff’s request. Dkt. Nos. 4; 5. In its Motion, Plaintiff seeks an award of “the principal sum of \$27,730.34 and \$7,404.91 in accrued interest as of August 13th, 2013 at the rate of 3.88% per annum.” Mot. at 4 ¶ 10.

III. LEGAL STANDARD

“Federal Rule of Civil Procedure 55 provides a two-step process that the Court must follow before it may enter a default judgment against a defendant.”” Elec. Creations Corp. v. Gigahertz, Inc., No. 12-CV-1423, 2013 WL 3229125, at *3 (quoting Robertson v. Doe, No. 05-CV-7046, 2008 WL 2519894, at *3 (S.D.N.Y. June 19, 2008)).

First, under Rule 55(a), when a party fails to plead or otherwise defend . . . the clerk must enter the party’s default. Second, pursuant to Rule 55(b)(2), the party seeking default judgment is required to present its application for entry of judgment to the court. . . . Notice of the application must be sent to the defaulting party so that it has an opportunity to show cause why the court should not enter a default judgment.

Id. (citations and internal quotation marks omitted).

“When a default is entered, the defendant is deemed to have admitted all of the well-pleaded factual allegations in the complaint pertaining to liability.” Bravado Int’l Grp. Merch. Servs., Inc. v. Ninna, Inc., 655 F. Supp. 2d 177, 188 (E.D.N.Y. 2009) (citing Greyhound Exhibitgroup, Inc. v. E.L. U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992)). “While a default judgment constitutes an admission of liability, the quantum of damages remains to be established by proof unless the amount is liquidated or susceptible of mathematical computation.” Flaks v. Koegel, 504 F.2d 702, 707 (2d Cir. 1974); see also Bravado Int’l, 655 F. Supp. 2d at 189. “[E]ven upon default, a court may not rubber-stamp the non-defaulting party’s damages calculation, but rather must ensure that there is a basis for the damages that are sought.” Robertson, 2008 WL 2519894, at *3. “The burden is on the plaintiff to establish its entitlement to recovery.” Bravado Int’l, 655 F. Supp. 2d at 189. “While the court must ensure that there is a basis for the damages specified in a default judgment, it may, but need not, make the determination through a hearing.” Id. at 190 (internal quotation marks omitted).

Under Local Rule 55.2(b), the moving party must submit with its motion for default

judgment: (1) a clerk's certificate of entry of default; (2) a proposed form of default judgment; (3) a copy of the pleading to which no response has been made; and (4) an affidavit. The affidavit must set forth that: (1) the party against whom judgment is sought is not an infant, incompetent, or in military service; (2) the party against whom judgment is sought has defaulted in appearance in the action; (3) service was properly effected under Federal Rule of Civil Procedure 4; (4) the amount sought is justly due and owing, and no part has been paid; and (5) the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred. L.R. 55.2(b) (citing L.R. 55.2(a)).

IV. DISCUSSION

Plaintiff has again failed to comply with the Local Rules. No proposed form of default judgment was included with Plaintiff's Third Motion for default judgment. See generally Mot. Plaintiff's Third Motion for default judgment is therefore denied. Pursuant to the Court's Decision and Order of July 30, 2010, denying Plaintiff's Second Motion for default judgment for failure to comply with the Local Rules, this action is now dismissed with prejudice. See Dkt. No. 9.

V. CONCLUSION

Accordingly, it is hereby:

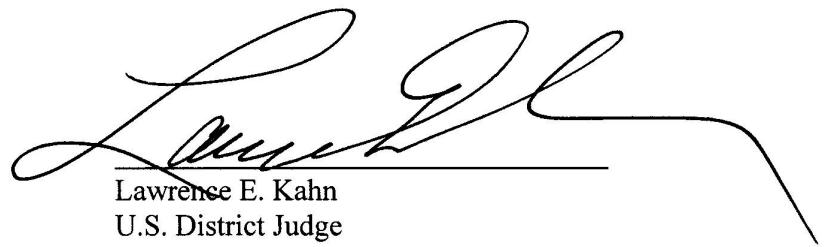
ORDERED, that Plaintiff's Third Motion (Dkt. No. 10) for default judgment is **DENIED**; and it is further

ORDERED, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED with prejudice**; and it is further

ORDERED, that the Clerk serve a copy of this Decision and Order on all parties.

IT IS SO ORDERED.

DATED: October 24, 2013
Albany, NY



Lawrence E. Kahn
U.S. District Judge